

**Florida's Request To Assume Administration of a Clean Water Act Section 404 Program
(85 FR 57853, September 16, 2020) EPA-HQ-OW-2018-0640**

Code 1e Corps-FDEP MOA

The memoranda of agreement have not been made available

Commenter (0386) expressed concerns about FDEP's memoranda of agreement that had not been completed or made available to the public for comment. The commenter stated that FDEP's proposal was fundamentally flawed in part because of FDEP's decision to remove references to memoranda of agreement (MOA) with federal agencies from the proposed rules, and not to disclose the content of those MOAs so as to allow for public comment before the State submits an application to the EPA, despite having told the public that it would.

The commenter also reiterated that the Corps has advised in the MOA between FDEP and the Corps to provide a retained waters GIS layer to the FDEP. The commenter pointed out that this information has not been provided to the public or to the state, and additionally, that the Corps has not indicated whether that GIS layer will simply identify retained waters, whether it will actually depict their mean high water lines (MHWL)/ordinary high water marks (OHWM), or the actual pre-determined location of the administrative boundary.

The commenter urged that the only information provided to the public and the EPA is a list of waters provided in FDEP's application. 404 Handbook B, app. A; the commenter argued this list fails to list numerous waterbodies that were previously on the Corps Retained Waters List in 2017 and that were submitted to the Corps during its comment period in 2018.